

SALES AND USE TAX REVISIONS

2024 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill amends the requirements governing when a seller has to pay or collect and remit sales and use tax.

Highlighted Provisions:

This bill:

- ▶ repeals the requirement that a seller has to pay or collect and remit the sales and use tax if the seller sells tangible personal property, products transferred electronically, or services for storage, use, or consumption in the state in more than a certain number of separate transactions; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

59-12-107, as last amended by Laws of Utah 2022, Chapter 273

59-12-107.6, as last amended by Laws of Utah 2023, Chapter 361

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **59-12-107** is amended to read:

59-12-107. Definitions -- Collection, remittance, and payment of tax by sellers or other persons -- Returns -- Reports -- Direct payment by purchaser of vehicle -- Other liability for collection -- Rulemaking authority -- Credits -- Treatment of bad debt -- Penalties and interest.

(1) As used in this section:

(a) "Ownership" means direct ownership or indirect ownership through a parent,

33 subsidiary, or affiliate.

34 (b) "Related seller" means a seller that:

35 (i) meets one or more of the criteria described in Subsection (2)(a)(i); and

36 (ii) delivers tangible personal property, a service, or a product transferred electronically

37 that is sold:

38 (A) by a seller that does not meet one or more of the criteria described in Subsection

39 (2)(a)(i); and

40 (B) to a purchaser in the state.

41 (c) "Substantial ownership interest" means an ownership interest in a business entity if

42 that ownership interest is greater than the degree of ownership of equity interest specified in 15

43 U.S.C. Sec. 78p, with respect to a person other than a director or an officer.

44 (2) (a) Except as provided in Subsection (2)(f), Section 59-12-107.1, or Section

45 59-12-123, and subject to Subsection (2)(g), each seller shall pay or collect and remit the sales

46 and use taxes imposed by this chapter if within this state the seller:

47 (i) has or utilizes:

48 (A) an office;

49 (B) a distribution house;

50 (C) a sales house;

51 (D) a warehouse;

52 (E) a service enterprise; or

53 (F) a place of business similar to Subsections (2)(a)(i)(A) through (E);

54 (ii) maintains a stock of goods;

55 (iii) regularly solicits orders, regardless of whether or not the orders are accepted in the

56 state, unless the seller's only activity in the state is:

57 (A) advertising; or

58 (B) solicitation by:

59 (I) direct mail;

60 (II) electronic mail;

61 (III) the Internet;

62 (IV) telecommunications service; or

63 (V) a means similar to Subsection (2)(a)(iii)(A) or (B);

(iv) regularly engages in the delivery of property in the state other than by:

(A) common carrier; or

(B) United States mail; or

(v) regularly engages in an activity directly related to the leasing or servicing of property located within the state.

(b) A seller is considered to be engaged in the business of selling tangible personal property, a product transferred electronically, or a service for use in the state, and shall pay or collect and remit the sales and use taxes imposed by this chapter if:

(i) the seller holds a substantial ownership interest in, or is owned in whole or in substantial part by, a related seller; and

(ii) (A) the seller sells the same or a substantially similar line of products as the related seller and does so under the same or a substantially similar business name; or

(B) the place of business described in Subsection (2)(a)(i) of the related seller or an in-state employee of the related seller is used to advertise, promote, or facilitate sales by the seller to a purchaser.

(c) Subject to Section 59-12-107.6, each seller that does not meet one or more of the criteria provided for in Subsection (2)(a) or is not a seller required to pay or collect and remit the sales and use taxes imposed by this chapter under Subsection (2)(b) shall pay or collect and remit the sales and use tax imposed by this chapter if the seller:

(i) sells tangible personal property, products transferred electronically, or services for storage, use, or consumption in the state; and

(ii) in either the previous calendar year or the current calendar year[;],

~~[(A)]~~ receives gross revenue from the sale of tangible personal property, products transferred electronically, or services for storage, use, or consumption in the state of more than \$100,000[; or].

~~[(B) sells tangible personal property, products transferred electronically, or services for storage, use, or consumption in the state in 200 or more separate transactions.]~~

(d) A seller that does not meet one or more of the criteria provided for in Subsection (2)(a) or is not a seller required to pay or collect and remit sales and use taxes under Subsection (2)(b), Subsection (2)(c), or Section 59-12-107.6 may voluntarily:

(i) collect a tax on a transaction described in Subsection 59-12-103(1); and

- 95 (ii) remit the tax to the commission as provided in this part.
- 96 (e) The collection and remittance of a tax under this chapter by a seller that is
- 97 registered under the agreement may not be used as a factor in determining whether that seller is
- 98 required by this Subsection (2) to:
- 99 (i) pay a tax, fee, or charge under:
- 100 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 101 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 102 (C) Section 19-6-714;
- 103 (D) Section 19-6-805;
- 104 (E) Title 69, Chapter 2, Part 4, Prepaid Wireless Telecommunications Service Charges;
- 105 or
- 106 (F) this title; or
- 107 (ii) collect and remit a tax, fee, or charge under:
- 108 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 109 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 110 (C) Section 19-6-714;
- 111 (D) Section 19-6-805;
- 112 (E) Title 69, Chapter 2, Part 4, Prepaid Wireless Telecommunications Service Charges;
- 113 or
- 114 (F) this title.
- 115 (f) A person shall pay a use tax imposed by this chapter on a transaction described in
- 116 Subsection 59-12-103(1) if:
- 117 (i) the seller did not collect a tax imposed by this chapter on the transaction; and
- 118 (ii) the person:
- 119 (A) stores the tangible personal property or product transferred electronically in the
- 120 state;
- 121 (B) uses the tangible personal property or product transferred electronically in the state;
- 122 or
- 123 (C) consumes the tangible personal property or product transferred electronically in the
- 124 state.
- 125 (g) The ownership of property that is located at the premises of a printer's facility with

which the retailer has contracted for printing and that consists of the final printed product, property that becomes a part of the final printed product, or copy from which the printed product is produced, shall not result in the retailer being considered to have or maintain an office, distribution house, sales house, warehouse, service enterprise, or other place of business, or to maintain a stock of goods, within this state.

(3) (a) Except as provided in Section 59-12-107.1, a seller shall collect a tax under this chapter from a purchaser.

(b) A seller may not collect as tax an amount, without regard to fractional parts of one cent, in excess of the tax computed at the rates prescribed by this chapter.

(c) (i) Each seller shall:

(A) give the purchaser a receipt for the tax collected; or

(B) bill the tax as a separate item and declare the name of this state and the seller's sales and use tax license number on the invoice for the sale.

(ii) The receipt or invoice is prima facie evidence that the seller has collected the tax and relieves the purchaser of the liability for reporting the tax to the commission as a consumer.

(d) A seller is not required to maintain a separate account for the tax collected, but is considered to be a person charged with receipt, safekeeping, and transfer of public money.

(e) Taxes collected by a seller pursuant to this chapter shall be held in trust for the benefit of the state and for payment to the commission in the manner and at the time provided for in this chapter.

(f) If any seller, during any reporting period, collects as a tax an amount in excess of the lawful state and local percentage of total taxable sales allowed under this chapter, the seller shall remit to the commission the full amount of the tax imposed under this chapter, plus any excess.

(g) If the accounting methods regularly employed by the seller in the transaction of the seller's business are such that reports of sales made during a calendar month or quarterly period will impose unnecessary hardships, the commission may accept reports at intervals that, in the commission's opinion, will better suit the convenience of the taxpayer or seller and will not jeopardize collection of the tax.

(h) (i) For a purchase paid with specie legal tender as defined in Section 59-1-1501.1,

and until such time as the commission accepts specie legal tender for the payment of a tax under this chapter, if the commission requires a seller to remit a tax under this chapter in legal tender other than specie legal tender, the seller shall state on the seller's books and records and on an invoice, bill of sale, or similar document provided to the purchaser:

(A) the purchase price in specie legal tender and in the legal tender the seller is required to remit to the commission;

(B) subject to Subsection (3)(h)(ii), the amount of tax due under this chapter in specie legal tender and in the legal tender the seller is required to remit to the commission;

(C) the tax rate under this chapter applicable to the purchase; and

(D) the date of the purchase.

(ii) (A) Subject to Subsection (3)(h)(ii)(B), for purposes of determining the amount of tax due under Subsection (3)(h)(i), a seller shall use the most recent London fixing price for the specie legal tender the purchaser paid.

(B) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules for determining the amount of tax due under Subsection (3)(h)(i) if the London fixing price is not available for a particular day.

(4) (a) Except as provided in Subsections (5) through (7) and Section 59-12-108, the sales or use tax imposed by this chapter is due and payable to the commission quarterly on or before the last day of the month next succeeding each quarterly calendar period.

(b) (i) Each seller shall, on or before the last day of the month next succeeding each quarterly calendar period, file with the commission a return for the preceding quarterly period.

(ii) The seller shall remit with the return under Subsection (4)(b)(i) the amount of the tax required under this chapter to be collected or paid for the period covered by the return.

(c) Except as provided in Subsection (5)(c), a return shall contain information and be in a form the commission prescribes by rule.

(d) (i) Subject to Subsection (4)(d)(ii), the sales tax as computed in the return shall be based on the total nonexempt sales made during the period for which the return is filed, including both cash and charge sales.

(ii) For a sale that includes the delivery or installation of tangible personal property at a location other than a seller's place of business described in Subsection (2)(a)(i), if the delivery or installation is separately stated on an invoice or receipt, a seller may compute the tax due on

the sale for purposes of Subsection (4)(d)(i) based on the amount the seller receives for that sale during each period for which the seller receives payment for the sale.

(e) (i) The use tax as computed in the return shall be based on the total amount of purchases for storage, use, or other consumption in this state made during the period for which the return is filed, including both cash and charge purchases.

(ii) (A) As used in this Subsection (4)(e)(ii), "qualifying purchaser" means a purchaser that is required to remit taxes under this chapter, but is not required to remit taxes monthly in accordance with Section 59-12-108, and that converts tangible personal property into real property.

(B) Subject to Subsections (4)(e)(ii)(C) and (D), a qualifying purchaser may remit the taxes due under this chapter on tangible personal property for which the qualifying purchaser claims an exemption as allowed under Subsection 59-12-104(23) or (25) based on the period in which the qualifying purchaser receives payment, in accordance with Subsection (4)(e)(ii)(C), for the conversion of the tangible personal property into real property.

(C) A qualifying purchaser remitting taxes due under this chapter in accordance with Subsection (4)(e)(ii)(B) shall remit an amount equal to the total amount of tax due on the qualifying purchaser's purchase of the tangible personal property that was converted into real property multiplied by a fraction, the numerator of which is the payment received in the period for the qualifying purchaser's sale of the tangible personal property that was converted into real property and the denominator of which is the entire sales price for the qualifying purchaser's sale of the tangible personal property that was converted into real property.

(D) A qualifying purchaser may remit taxes due under this chapter in accordance with this Subsection (4)(e)(ii) only if the books and records that the qualifying purchaser keeps in the qualifying purchaser's regular course of business identify by reasonable and verifiable standards that the tangible personal property was converted into real property.

(f) (i) Subject to Subsection (4)(f)(ii) and in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule extend the time for making returns and paying the taxes.

(ii) An extension under Subsection (4)(f)(i) may not be for more than 90 days.

(g) The commission may require returns and payment of the tax to be made for other than quarterly periods if the commission considers it necessary in order to ensure the payment

219 of the tax imposed by this chapter.

220 (h) (i) The commission may require a seller that files a simplified electronic return with
221 the commission to file an additional electronic report with the commission.

222 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
223 commission may make rules providing:

224 (A) the information required to be included in the additional electronic report described
225 in Subsection (4)(h)(i); and

226 (B) one or more due dates for filing the additional electronic report described in
227 Subsection (4)(h)(i).

228 (5) (a) As used in this Subsection (5) and Subsection (6)(b), " voluntary seller" means a
229 seller that is:

230 (i) registered under the agreement;

231 (ii) described in Subsection (2)(d); and

232 (iii) not a:

233 (A) model 1 seller;

234 (B) model 2 seller; or

235 (C) model 3 seller.

236 (b) (i) Except as provided in Subsection (5)(b)(ii), a tax a voluntary seller collects in
237 accordance with Subsection (2)(d) is due and payable:

238 (A) to the commission;

239 (B) annually; and

240 (C) on or before the last day of the month immediately following the last day of each
241 calendar year.

242 (ii) The commission may require that a tax a voluntary seller collects in accordance
243 with Subsection (2)(d) be due and payable:

244 (A) to the commission; and

245 (B) on the last day of the month immediately following any month in which the seller
246 accumulates a total of at least \$1,000 in agreement sales and use tax.

247 (c) (i) If a voluntary seller remits a tax to the commission in accordance with
248 Subsection (5)(b), the voluntary seller shall file a return:

249 (A) with the commission;

250 (B) with respect to the tax;

251 (C) containing information prescribed by the commission; and

252 (D) on a form prescribed by the commission.

253 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

254 commission shall make rules prescribing:

255 (A) the information required to be contained in a return described in Subsection

256 (5)(c)(i); and

257 (B) the form described in Subsection (5)(c)(i)(D).

258 (d) A tax a voluntary seller collects in accordance with this Subsection (5) shall be

259 calculated on the basis of the total amount of taxable transactions under Subsection

260 59-12-103(1) the voluntary seller completes, including:

261 (i) a cash transaction; and

262 (ii) a charge transaction.

263 (6) (a) Except as provided in Subsection (6)(b), a tax a seller that files a simplified

264 electronic return collects in accordance with this chapter is due and payable:

265 (i) monthly on or before the last day of the month immediately following the month for

266 which the seller collects a tax under this chapter; and

267 (ii) for the month for which the seller collects a tax under this chapter.

268 (b) A tax a voluntary seller that files a simplified electronic return collects in

269 accordance with this chapter is due and payable as provided in Subsection (5).

270 (7) (a) On each vehicle sale made by other than a regular licensed vehicle dealer, the

271 purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to

272 titling or registration under the laws of this state.

273 (b) The commission shall collect the tax described in Subsection (7)(a) when the

274 vehicle is titled or registered.

275 (8) If any sale of tangible personal property or any other taxable transaction under

276 Subsection 59-12-103(1), is made by a wholesaler to a retailer:

277 (a) the wholesaler is not responsible for the collection or payment of the tax imposed

278 on the sale; and

279 (b) the retailer is responsible for the collection or payment of the tax imposed on the

280 sale if:

(i) the retailer represents that the tangible personal property, product transferred electronically, or service is purchased by the retailer for resale; and

(ii) the tangible personal property, product transferred electronically, or service is not subsequently resold.

(9) If any sale of property or service subject to the tax is made to a person prepaying sales or use tax in accordance with Title 63M, Chapter 5, Resource Development Act, or to a contractor or subcontractor of that person:

(a) the person to whom such payment or consideration is payable is not responsible for the collection or payment of the sales or use tax; and

(b) the person prepaying the sales or use tax is responsible for the collection or payment of the sales or use tax if the person prepaying the sales or use tax represents that the amount prepaid as sales or use tax has not been fully credited against sales or use tax due and payable under the rules promulgated by the commission.

(10) (a) For purposes of this Subsection (10):

(i) Except as provided in Subsection (10)(a)(ii), "bad debt" means the same as that term is defined in Section 166, Internal Revenue Code.

(ii) "Bad debt" does not include:

(A) an amount included in the purchase price of tangible personal property, a product transferred electronically, or a service that is:

(I) not a transaction described in Subsection 59-12-103(1); or

(II) exempt under Section 59-12-104;

(B) a financing charge;

(C) interest;

(D) a tax imposed under this chapter on the purchase price of tangible personal property, a product transferred electronically, or a service;

(E) an uncollectible amount on tangible personal property or a product transferred electronically that:

(I) is subject to a tax under this chapter; and

(II) remains in the possession of a seller until the full purchase price is paid;

(F) an expense incurred in attempting to collect any debt; or

(G) an amount that a seller does not collect on repossessed property.

(b) (i) To the extent an amount remitted in accordance with Subsection (4)(d) later becomes bad debt, a seller may deduct the bad debt from the total amount from which a tax under this chapter is calculated on a return.

(ii) A qualifying purchaser, as defined in Subsection (4)(e)(ii)(A), may deduct from the total amount of taxes due under this chapter the amount of tax the qualifying purchaser paid on the qualifying purchaser's purchase of tangible personal property converted into real property to the extent that:

(A) tax was remitted in accordance with Subsection (4)(e) on that tangible personal property converted into real property;

(B) the qualifying purchaser's sale of that tangible personal property converted into real property later becomes bad debt; and

(C) the books and records that the qualifying purchaser keeps in the qualifying purchaser's regular course of business identify by reasonable and verifiable standards that the tangible personal property was converted into real property.

(c) A seller may file a refund claim with the commission if:

(i) the amount of bad debt for the time period described in Subsection (10)(e) exceeds the amount of the seller's sales that are subject to a tax under this chapter for that same time period; and

(ii) as provided in Section 59-1-1410.

(d) A bad debt deduction under this section may not include interest.

(e) A bad debt may be deducted under this Subsection (10) on a return for the time period during which the bad debt:

(i) is written off as uncollectible in the seller's books and records; and

(ii) would be eligible for a bad debt deduction:

(A) for federal income tax purposes; and

(B) if the seller were required to file a federal income tax return.

(f) If a seller recovers any portion of bad debt for which the seller makes a deduction or claims a refund under this Subsection (10), the seller shall report and remit a tax under this chapter:

(i) on the portion of the bad debt the seller recovers; and

(ii) on a return filed for the time period for which the portion of the bad debt is

343 recovered.

344 (g) For purposes of reporting a recovery of a portion of bad debt under Subsection
345 (10)(f), a seller shall apply amounts received on the bad debt in the following order:

346 (i) in a proportional amount:

347 (A) to the purchase price of the tangible personal property, product transferred
348 electronically, or service; and

349 (B) to the tax due under this chapter on the tangible personal property, product
350 transferred electronically, or service; and

351 (ii) to:

352 (A) interest charges;

353 (B) service charges; and

354 (C) other charges.

355 (h) A seller's certified service provider may make a deduction or claim a refund for bad
356 debt on behalf of the seller:

357 (i) in accordance with this Subsection (10); and

358 (ii) if the certified service provider credits or refunds the entire amount of the bad debt
359 deduction or refund to the seller.

360 (i) A seller may allocate bad debt among the states that are members of the agreement
361 if the seller's books and records support that allocation.

362 (11) (a) A seller may not, with intent to evade any tax, fail to timely remit the full
363 amount of tax required by this chapter.

364 (b) A violation of this section is punishable as provided in Section 59-1-401.

365 (c) Each person that fails to pay any tax to the state or any amount of tax required to be
366 paid to the state, except amounts determined to be due by the commission under Chapter 1,
367 Part 14, Assessment, Collections, and Refunds Act, or Section 59-12-111, within the time
368 required by this chapter, or that fails to file any return as required by this chapter, shall pay, in
369 addition to the tax, penalties and interest as provided in Sections 59-1-401 and 59-1-402.

370 (d) For purposes of prosecution under this section, each quarterly tax period in which a
371 seller, with intent to evade any tax, collects a tax and fails to timely remit the full amount of the
372 tax required to be remitted constitutes a separate offense.

373 Section 2. Section **59-12-107.6** is amended to read:

59-12-107.6. Marketplace facilitator collection, remittance, and payment of sales tax obligation -- Marketplace seller collection, remittance, and payment of sales tax obligation -- Liability for collection.

(1) A marketplace facilitator shall pay or collect and remit taxes imposed by this chapter in accordance with Section 59-12-107:

(a) if the marketplace facilitator meets one or more of the criteria provided for in Subsection 59-12-107(2)(a) or (b); and

(b) on the sales the marketplace facilitator made on the marketplace facilitator's own behalf.

(2) (a) A marketplace facilitator shall pay or collect and remit taxes imposed by this chapter in accordance with Subsection (3) if the marketplace facilitator, in the previous calendar year or the current calendar year, makes sales of tangible personal property, products transferred electronically, or services on the marketplace facilitator's own behalf or facilitates sales on behalf of one or more marketplace sellers[:]

~~[(i)]~~ that exceed \$100,000~~[-or]~~.

~~[(ii) in 200 or more separate transactions.]~~

(b) For purposes of determining if a marketplace facilitator ~~[meets or exceeds one or both thresholds]~~ exceeds the threshold described in this Subsection (2), a marketplace facilitator shall separately total:

(i) the marketplace facilitator's sales; and

(ii) any sales the marketplace facilitator makes or facilitates for a marketplace seller.

(c) A marketplace facilitator without a physical presence in this state shall begin collecting and remitting the taxes imposed by this chapter no later than the first day of the calendar quarter that is at least 60 days after the day on which the marketplace facilitator ~~[meets or exceeds either]~~ exceeds the threshold described in Subsection (2)(a).

(3) A marketplace facilitator described in Subsection (2) shall pay or collect and remit taxes imposed by this chapter for each sale that the marketplace facilitator:

(a) makes on the marketplace facilitator's own behalf; or

(b) makes or facilitates on behalf of a marketplace seller, regardless of:

(i) whether the marketplace seller has an obligation to pay or collect and remit taxes under Section 59-12-107;

(ii) whether the marketplace seller would have been required to pay or collect and remit taxes under Section 59-12-107 if the marketplace facilitator had not facilitated the sale; or

(iii) the amount of the sales price or the purchase price that accrues to or benefits the marketplace facilitator, the marketplace seller, or any other person.

(4) A marketplace facilitator shall comply with the procedures and requirements in this chapter and Chapter 1, General Taxation Policies, for sellers required to pay or collect and remit taxes except that the marketplace facilitator shall segregate, in the marketplace facilitator's books and records:

(a) the sales that the marketplace facilitator makes on the marketplace facilitator's own behalf; and

(b) the sales that the marketplace facilitator makes or facilitates on behalf of one or more marketplace sellers.

(5) (a) The commission may audit the marketplace facilitator for sales made or facilitated through the marketplace facilitator's marketplace on behalf of one or more marketplace sellers.

(b) The commission may not audit the marketplace seller for sales made or facilitated through the marketplace facilitator's marketplace on the marketplace seller's behalf.

(6) Nothing in this section prohibits a marketplace facilitator from providing in a marketplace facilitator's agreement with a marketplace seller for the recovery of taxes, and any related interest or penalties to the extent that a tax, interest, or penalty is assessed by the state in an audit of the marketplace facilitator on a retail sale:

(a) that a marketplace facilitator makes or facilitates on behalf of a marketplace seller; and

(b) for which the marketplace facilitator relied on incorrect or incomplete information provided by the marketplace seller.

~~[(7)(a) Subject to Subsections (7)(b) and (c), a marketplace facilitator is not liable for failing to collect the taxes under this chapter for a sale on which the marketplace facilitator failed to collect taxes if the marketplace facilitator demonstrates, to the satisfaction of the commission, that:]~~

~~[(i) the marketplace facilitator made or facilitated the sale through the marketplace~~

436 facilitator's marketplace on or before December 31, 2022;]

437 ~~[(ii) the marketplace facilitator made or facilitated the sale on behalf of a marketplace~~

438 ~~seller and not on behalf of the marketplace facilitator;]~~

439 ~~[(iii) the marketplace facilitator and the marketplace seller are not affiliates; and]~~

440 ~~[(iv) the failure to collect taxes was due to a good faith error other than an error in~~

441 ~~sourcing;]~~

442 ~~[(b) For purposes of Subsection (7)(a):]~~

443 ~~[(i) for sales made or facilitated during the 2019 or 2020 calendar year, the marketplace~~

444 ~~facilitator is not liable for the amount the marketplace facilitator fails to collect due to error that~~

445 ~~is equal to the error rate, but not to exceed a 7% error rate;]~~

446 ~~[(ii) for sales made or facilitated during the 2021 calendar year, the marketplace~~

447 ~~facilitator is not liable for the amount the marketplace facilitator fails to collect due to error that~~

448 ~~is equal to the error rate, but not to exceed a 5% error rate; and]~~

449 ~~[(iii) for sales made or facilitated during the 2022 calendar year, the marketplace~~

450 ~~facilitator is not liable for the amount the marketplace facilitator fails to collect due to error that~~

451 ~~is equal to the error rate, but not to exceed a 3% error rate;]~~

452 ~~[(c) The commission shall calculate the percentages described in Subsection (7)(b):]~~

453 ~~[(i) using the total taxes due on sales that:]~~

454 ~~[(A) a marketplace facilitator made or facilitated in this state on behalf of one or more~~

455 ~~marketplace sellers during the calendar year that the sale for which the marketplace facilitator~~

456 ~~seeks relief was made or facilitated; and]~~

457 ~~[(B) are sourced to the state; and]~~

458 ~~[(ii) not including sales that the marketplace facilitator or the marketplace facilitator's~~

459 ~~affiliates directly made during the same calendar year;]~~

460 ~~[(8)]~~ (7) A marketplace seller shall pay or collect and remit taxes imposed by this

461 chapter for a sale of tangible personal property, a product transferred electronically, or a service

462 that the marketplace seller makes other than through a marketplace facilitator if:

463 (a) the sale is sourced to this state; and

464 (b) the marketplace seller's sales in this state, other than through a marketplace

465 facilitator, in the previous calendar year or the current calendar year[;]

466 ~~[(i)]~~ exceed \$100,000[; or].

467 ~~[(ii) occur in 200 or more separate transactions.]~~

468 ~~[(9)]~~ (8) (a) A marketplace seller may not pay or collect and remit taxes imposed by
469 this chapter for any sale for which a marketplace facilitator is required to pay or collect and
470 remit.

471 (b) A marketplace seller is not liable for a marketplace facilitator's failure to pay or
472 collect and remit, or the marketplace facilitator's underpayment of, taxes imposed by this
473 chapter for any sale for which a marketplace facilitator is required to pay or collect and remit
474 the taxes imposed by this chapter.

475 ~~[(10)]~~ (9) (a) A purchaser of tangible personal property, a product transferred
476 electronically, or a service may file a claim for a refund with the marketplace facilitator if the
477 purchaser overpaid taxes imposed under this chapter.

478 (b) No person may bring a class action against a marketplace facilitator in any court of
479 the state on behalf of purchasers arising from or in any way related to an overpayment of taxes
480 collected and remitted on sales made or facilitated by the marketplace facilitator on behalf of a
481 marketplace seller, regardless of whether such claim is characterized as a tax refund claim.

482 ~~[(11)]~~ (10) Nothing in this section affects the obligation of a purchaser to remit the use
483 tax described in Subsection 59-12-107(2)(f) on any sale for which a marketplace facilitator or
484 marketplace seller failed to collect and remit a tax imposed by this chapter.

485 Section 3. **Effective date.**

486 This bill takes effect on July 1, 2024.